

Memorandum

To : Ross Warren (MIC:66)
Legislative Division

Date: December 22, 1993

From : Janet Vining
Supervising Staff Attorney

Subject: AB 1220

I am writing in response to your November 16, 1993 memorandum to Larry Augusta concerning the liability of solid waste landfill operators for the annual solid waste fee for calendar year 1993.

As we have discussed over the telephone, it is our opinion that the annual solid waste fee imposed by Public Resources Code Section 46801 is not due for any portion of calendar year 1993.

Section 46801 was repealed by AB 1220 (Chapter 656 of the Statutes of 1993), effective October 1, 1993. The annual fee for calendar year 1993 would have been due July 1, 1994. Since the statutory sections imposing the annual fee and providing for its collection were all repealed during the 1993 reporting period, we conclude that the annual solid waste fee is not due for calendar year 1993.

The annual fee was due from the landfill operator, and not the customer who brought solid waste to the landfill for disposal. However, we understand that most landfill operators, or contractors who hauled waste to the landfill, charged their customers an amount which covered the cost of the annual fee. The customers were charged such an amount throughout the calendar year, even though the landfill operator did not have to pay the annual fee to the state until the subsequent year.

It is our opinion that neither the Public Resources Code nor the Revenue and Taxation Code require the landfill operators to remit to the Board any amounts identified to their customers as representing the annual solid waste fee. Furthermore, the Codes do not require the landfill operators to return such amounts to their customers.

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AB 1220 added Section 45651.5 to the Revenue and Taxation Code. This section provides that, when a customer pays a landfill operator an amount represented to be reimbursement for solid waste fees due, and the amount is in excess of the fee actually due, the landfill operator must return the excess to the person who paid it or remit it to the Board. While it could be argued that Section 45651.5 requires a landfill operator to return to its customers any amounts it charged them for the annual solid waste fee for calendar year 1993, the section is applicable only to fees due "under this part" (Part 23 of Division 2 of the Revenue and Taxation Code). On the same day that Section 45651.5 became effective, all references to the annual solid waste fee were removed from Part 23 of Division 2 of the Revenue and Taxation Code. Therefore, Section 45651.5 does not apply to any reimbursement landfill operators may have received for annual solid waste fees due for 1993. This interpretation of Section 45651.5 applies to reimbursement collected for periods after October 1, 1993, as well as periods prior to that date.

If you have any additional questions concerning this matter, please feel free to call me.

Janet Vining

JV:ph

cc: Mr. Dennis Myers, Integrated Waste Management Board
Mr. Monte Williams (MIC:56)
Mr. Frank Love (MIC:57)
Mr. Larry Augusta

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